(2008) 09 AHC CK 0109

In the Allahabad High Court

Amar Bahadur Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Citation : (2008) 09 AHC CK 0109

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Judgement

Sanjay Misra, J.—Heard Sri Ashok Khare learned senior counsel assisted by Sri Ajit Kumar Singh learned Counsel for the petitioner and learned Standing counsel who has accepted notice on behalf of respondent.

2. According to learned Counsel for the petitioner the chargesheet indicated the absence of rice husk in the rice mill for the year 2000-01 whereas the petitioner had certified the same earlier on 28.2.2001. The chargesheet has framed several charges against the petitioner where against an enquiry was held and the impugned order of dismissal has been passed. Learned Counsel for the petitioner has contended that the enquiry was bad in law for violation of principles of natural justice and non following of the procedure prescribed for departmental enquiry and also that under the rules the major punishment prescribed can at the maximum be granted and no such punishment of recovery of amount alleged to be loss caused to the Government is prescribed as a punishment therefore while dismissing the petitioner from service the recovery of loss caused to the Government to the tune of Rs. 53,70,092.44 could not have been ordered against the petitioner. He states that for the very same absence of rice husk the rice millers were made responsible for the loss caused to the Government and proceeding of recovery by issuing recovery certificates were initiated against them. The rice millers filed writ petitions No. 33545 of 2001 and 31089 of 2001 before this Court where in they were granted protection against coercive methods by an interim order dated 4.3.2002 and 23.1.2002 as contained in Annexure 11 to the writ petition. According to him the aforesaid recovery could

not be made from the petitioner under such circumstances.

3. Learned Standing counsel has opposed the maintainability of this writ petition on the ground of an alternative statutory remedy available to the petitioner before the U.P. Public Service Tribunal.

4. Learned Counsel for the petitioner has relied upon a decision of the Hon''ble Supreme Court in the case of Whirlpool Corporation reported in (1998) 8 SCC to state that when violation of principles of natural justice have been alleged and the punishment imposed is disproportionate to the misconduct alleged to have been committed alternative remedy cannot be an absolute bar for maintaining a writ petition. He has further relied on a decision in the case of State Bank of India and others Vs. T.J. Paul, and has referred to paragraph 18 and 19. Paragraphs 18 and 19 are quoted here under:

18. But this does not conclude the matter. The learned Senior Counsel for the respondent, Sri P.P. Rao is right in contending that the appellate was not warranted in the facts of the case, it could not have awarded the punishment of "removal" which was not one of the enumerated penalties to this aspect. If one reads the order of the appellate authority, it is clear that the said authority went by Rule 49(g) of the State Bank of India (Supervising Staff) Service Rules which admittedly, is not applicable to charges pertaining to the period 1977-81 when the rules of Cochin Bank applied. The amalgamation of Bank of Cochin with State Bank of India took place only on 27.4.1985. It may be that the rules of the State Bank of India provided for a punishment of removal, but in the rules relating to penalties for "major misconduct" in para 22(v) of the rules applicable to the employees of Bank of Cochin, removal is not one of the enumerated punishments which could be imposed. The said punishment is not the same thing as "condoning misconduct and merely discharging from service" as provided in para 22(v)(e) of the said rules.

19. Learned Senior Counsel for the appellants, Sri T.R. Andhyarujina tried to submit that if the appellate authority decided not to dismiss the respondent, it still had inherent power to award a punishment of "removal", which was lesser in severity. Learned Senior Counsel contended that the discretion of the authorities to award such an appropriate punishment could not be interfered with in view of the decision of this Court in Union of India v. G. Ganayutham. In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves, namely, the rules of Bank of Cochin and the court is merely insisting that the authority is confined to the limits of its discretion as restricted by the rules. Inasmuch as the rules of Bank of Cochin have enumerated and listed out the punishments for "major misconduct", we are of the view that the punishment of "removal" could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself

to one or the other punishment for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of "removal" that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are "warning of censure of adverse remark being entered, or fine, or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service." The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one or the other punishment in para 22(v) other than dismissal without notice.

5. According to him there is no punishment in the rules which can enable the respondents to direct recovery of an amount alleged to be loss caused to the Government by the petitioner. He states that such being not one of the major punishment, it could not have been imposed upon the petitioner in accordance with law.

6. In view of the aforesaid circumstances let a counter affidavit be filed by the respondents within four weeks.

7. Since the recovery of the same loss caused to the Government was initiated against the rice millers and they have been granted an interim protection by a Division Bench of this Court in the two writ petitions referred to above it is provided that till the next date of listing the recovery of the amount of Rs. 53,70,092.44 alleged to be loss caused to the Government shall not be made by any coercive method.

8. List on 4.11.2008 before the appropriate Bench. This case may not be treated as tied up of part heard to this Bench.